

ASSEMBLY BILL

No. 1495

Introduced by Assembly Member Canciamilla

February 22, 2005

An act to amend Section 415.46 of the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 1495, as introduced, Canciamilla. Process serving: prejudgment claim of right to possession.

Existing law authorizes a marshal, sheriff, or registered process server to effect service of a prejudgment claim of right to possession in an unlawful detainer action.

This bill would additionally authorize government employees acting within the scope of their employment, attorneys and their employees, persons specially appointed by a court to serve its process, licensed private investigators and their employees, and specified professional photocopiers and their employees to effect that service.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 415.46 of the Code of Civil Procedure is
- 2 amended to read:
- 3 415.46. (a) In addition to the service of a summons and
- 4 complaint in an action for unlawful detainer upon a tenant and
- 5 subtenant, if any, as prescribed by this article, a prejudgment
- 6 claim of right to possession may also be served on any person
- 7 who appears to be or who may claim to have occupied the

1 premises at the time of the filing of the action. Service upon
2 occupants shall be made pursuant to subdivision (c) by serving a
3 copy of a prejudgment claim of right to possession, as specified
4 in subdivision (f), attached to a copy of the summons and
5 complaint at the same time service is made upon the tenant and
6 subtenant, if any.

7 (b) Service of the prejudgment claim of right to possession in
8 this manner shall be effected by a marshal, sheriff, ~~or~~ registered
9 process server, *or anyone who is exempt from registration*
10 *pursuant to subdivision (b) of Section 22350 of the Business and*
11 *Professions Code.*

12 (c) When serving the summons and complaint upon a tenant
13 and subtenant, if any, the marshal, sheriff, ~~or~~ registered process
14 server, *or other person who is authorized to effect service*
15 *pursuant to subdivision (b)* shall make a reasonably diligent
16 effort to ascertain whether there are other adult occupants of the
17 premises who are not named in the summons and complaint by
18 inquiring of the person or persons who are being personally
19 served, or any person of suitable age and discretion who appears
20 to reside upon the premises, whether there are other occupants of
21 the premises.

22 If the identity of ~~such an~~ *that* occupant is disclosed to the
23 ~~officer or process server~~ *person serving process* and the occupant
24 is present at the premises, the ~~officer or process server~~ *person*
25 *serving process* shall serve that occupant with a copy of the
26 prejudgment claim of right to possession attached to a copy of
27 the summons and complaint. If personal service cannot be made
28 upon that occupant at that time, service may be effected by (1)
29 leaving a copy of a prejudgment claim of right to possession
30 attached to a copy of the summons and complaint addressed to
31 that occupant with a person of suitable age and discretion at the
32 premises, (2) affixing the same so that it is not readily removable
33 in a conspicuous place on the premises in a manner most likely to
34 give actual notice to that occupant, and (3) sending the same
35 addressed to that occupant by first-class mail.

36 In addition to the service on an identified occupant, or if no
37 occupant is disclosed to the ~~officer or process server~~ *person*
38 *serving process*, or if substituted service is made upon the tenant
39 and subtenant, if any, the ~~officer or process server~~ *person serving*
40 *process* shall serve a prejudgment claim of right to possession for

1 all other persons who may claim to occupy the premises at the
2 time of the filing of the action by (1) leaving a copy of a
3 prejudgment claim of right to possession attached to a copy of
4 the summons and complaint at the premises at the same time
5 service is made upon the tenant and subtenant, if any, (2) affixing
6 the same so that it is not readily removable in a conspicuous
7 place on the premises so that it is likely to give actual notice to
8 an occupant, and (3) sending the same addressed to “all
9 occupants in care of the named tenant” to the premises by
10 first-class mail.

11 The person serving process shall state the date of service on the
12 prejudgment claim of right to possession form. However, the
13 absence of the date of service on the prejudgment claim of right
14 to possession does not invalidate the claim.

15 (d) Proof of service under this section shall be filed with the
16 court and shall include a statement that service was made
17 pursuant to this section. Service on occupants in accordance with
18 this section shall not alter or affect service upon the tenant or
19 subtenant, if any.

20 (e) If an owner or his or her agent has directed and obtained
21 service of a prejudgment claim of right to possession in
22 accordance with this section, no occupant of the premises,
23 *regardless of whether or not such that* occupant is named in the
24 judgment for possession, may object to the enforcement of that
25 judgment as prescribed in Section 1174.3.

26 (f) The prejudgment claim of right to possession shall be made
27 on the following form:

- 1
- 2 NOTE TO PRINTING OFFICE: INSERT CAMERA-READY
- 3 COPY HERE
- 4 for Prejudgment Claim of Right to Possession form
- 5 as printed on pages 4 to 7 of Chapter 57, 1991 Statutes.

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